IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.231 of 2004

AND

CIVIL APPLICATION NO. 2952 of 2004

IN

FIRST APPEAL NO. 54 of 2004

Shaikh Mustaq and Ors. .. Appellants

V/s

Mrs.Daphine D'Souza and Ors... Respondents

Mr.A.K.Singh, Advocate for Applicant

Mr.Clive D'Souza for Respondents

CORAM:S.R.SATHE,J.

DATED;10th Feb. 2006

P.C.:-

. Heard both the learned Advocates.

. In view of the order passed by this Court (Coram:A.S.Oka,J) on 3-9-2004 the above C.A. is heard. The appeal is already admitted. It is, therefore,necessary to stay the execution of the order dated 18-8-2003 in Short Cause Suit No.7291 of 1990 till the disposal of the appeal as the applicants are in possession of the suit property since long time prior to

filing of the suit.

. The learned Advocate for the Respondent submitted that the applicants are trespassers and decree for eviction is passed against them. So, in order to protect the interest of the Respondent original plaintiff it is necessary to direct the applicants original defendants to pay compensation of Rs.4,000/- per month to the Respondent original plaintiffs.

. From perusal, of the judgment of the trial Court, it appears that even according to the defendants the property in question is not owned by them but they were inducted by some other persons and they were paying rent of Rs.75/- per month to that person. However, contention in this behalf is not duly proved by the defendants. Having regard that the property is being occupied by the applicants for business purposes it is necessary to direct the applicant to deposit Rs.1,500/- per month in the Court from the date of the decree. So far as the arrears of compensation are concerned, i.e. arrears till today, two months time is granted to pay the arrears. The learned Advocate for the Respondent at this stage submits that the liberty be granted to the Respondents-plaintiffs to withdraw the amount. Liberty granted on Respondents-plaintiffs giving undertaking in the form of affidavit that in case the appeal is decided against them, they will return the entire compensation amount that has been withdrawn by them within a period

of two months.

. Relief in terms of prayer clause (a) is granted on the following conditions :-

i) The applicant/appellant will not create any third party interest and will not part with possession of the suit property.

ii) The applicant/appellant will not carry out any major additions or alterations in the suit property without prior permission of this Court;

iii) The applicant/appellant shall not do any act causing damage to the suit property;

iv) The applicant/appellant shall deposit Rs.1500/- per month in this Court on or before 10th of each English Calendar month; if applicant-appellant fails to deposit the compensation accordingly for any two consecutive months, stay granted to execution of the order as mentioned above shall automatically stands vacated.

. C.A. disposed of accordingly.

(S.R.SATHE,J.)